

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Freddie McEachern, Jr.,)	C/A No. 4:14-cv-1234-BHH-KDW
)	
Plaintiff,)	
)	
vs.)	
)	REPORT AND RECOMMENDATION
James Gray, Jr., City of Marion, Sheriff)	
Mark Richardson, Marion County, S. C.)	
Department of Social Services, S. C.)	
Department of Education, S. C.)	
Department of Judicial Review, S. C.)	
Residential Builders Commission, and)	
S.C. Election Commission,)	
)	
Defendants.)	
)	

Plaintiff, proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. This matter is before the court on Plaintiff's Motion for Entry of Default filed on December 17, 2014. ECF No. 67. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(d), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed under Title 42, United States Code, Section 1983, and submit findings and recommendations to the District Court.

Plaintiff's Motion appears to ask the court to enter default judgment against all Defendants because Defendants "failed to give the civil suit to their attorneys for an answer, to [be] given to Plaintiff within 21 days." ECF No. 66 at 3. In their Response, Defendants Sheriff Mark Richardson, Marion County, S.C. Department of Social Services, S.C. Department of Education, S.C. Department of Juvenile Review, S.C. Residential Builders Commission, and S.C. Election Commission maintain that Plaintiff served his Complaint on Defendants through certified mail cards, and no date on any of the cards is earlier than October 24, 2014. ECF No.

73. Therefore, these Defendants contend that the earliest Defendants' answer would have been due is on or before November 14, 2014. *Id.* These Defendants maintain that their "Motion to Dismiss and/or Motion for More Definite Statement" was filed on November 13, 2014, and therefore they are not in default. *Id.* In a separate response, Defendants Gray and the City of Marion also maintain they are not in default because they appropriately responded to the Complaint by filing a Motion under Fed. R. Civ. 12. ECF No. 75.

Rule 55(a) of the Federal Rules of Civil Procedure provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead **or otherwise defend**, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). The undersigned has reviewed the docket and finds that November 14, 2014 is the earliest due date for Defendants to serve Plaintiff with an answer **or responsive pleading**. Here, the docket reflects that Defendants Sheriff Mark Richardson, Marion County, S.C. Department of Social Services, S.C. Department of Education, S.C. Department of Juvenile Review, S.C. Residential Builders Commission, and S.C. Election Commission filed a responsive pleading on November 14, 2014. ECF No. 50. Additionally, the docket reflects that Defendants Gray and the City of Marion filed a responsive pleading on November 17, 2014. ECF No. 54. Finally, S.C. Builder Commission filed a responsive pleading on November 24, 2014. ECF No. 58. Based on the stamped dates of service on the certified mail cards, no Defendants filed an untimely responsive pleading.

Rule 12(b) of the Federal Rules of Civil Procedure allows parties to assert seven defenses, including failure to state a claim, in the form of a responsive pleading. Here, all Defendants have defended against Plaintiff's Complaint by filing Motions pursuant to Fed. R. Civ. P. 12(b)(1), (b)(6), and (e). ECF No. 50, 54, 58. Therefore, Defendants have satisfied Rule

12 requirements. Accordingly, it is recommended that Plaintiff's Motion for Entry of Default, **ECF No. 67, be denied.**

IT IS SO RECOMMENDED.

January 22, 2015
Florence, South Carolina



Kaymani D. West
United States Magistrate Judge